



THE UNIVERSITY OF MICHIGAN

MARVIN KRISLOV
VICE PRESIDENT AND GENERAL COUNSEL

4010 FLEMING ADMINISTRATION BUILDING
ANN ARBOR, MICHIGAN 48109-1340
734 764-0305 FAX: 734 615-6942

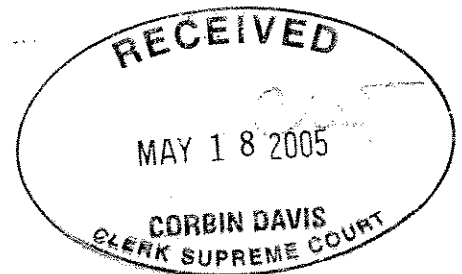
May 9, 2005



Hon. Maura D. Corrigan
Chief Justice, Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa
Lansing, MI 48909

BY EMAIL AND U.S. MAIL

Elizabeth A. Jamieson, Esq.
Chairperson, Michigan State Bar Representative Assembly
Varnum Riddering Schmidt Howlet LLP
333 Bridgewater Place NW
P.O. Box 352
Grand Rapids, MI 49501



Re: ADM File No. 2003-62, Proposals re Michigan Rules of Professional Conduct

Dear Chief Justice Corrigan and Ms. Jamieson:

As you know, proposals are being considered for widespread changes to the Michigan Rules of Professional Conduct (MRPC) for the attorneys of the Michigan Bar. Following are comments from the University of Michigan concerning the ownership of files and records, an issue that we understand is being considered as part of the proposed MRPC.

For several reasons, files and records created at the request of or in the course of representing a client should be owned by the client, not the attorney. First, the client has employed and paid the attorney to create such files. In many, if not most, cases the client has specifically directed the attorney to create the specific documents and files contained in the files. In fact, almost without exception, the attorney has even charged the client for the paper onto which the documents are written. Further, the original files are often needed by the client in order to receive adequate future legal representation on the matter. We do not see any justification for ownership lying with any party but the client.

The rules should, however, provide for exceptions. For example, we understand that some states provide for a lien on the files if the client does not pay the fees and costs associated with the files, and this would seem to be the reasonable solution for non-paying clients. Also, accounting documents, checking account records, and draft statements or bills should not be owned by the client. Further, it is foreseeable that the attorney will have a legitimate desire to retain a photocopy of all or a portion of the client's file, for example for use in the event of malpractice

The Honorable Maura D. Corrigan
Elizabeth A. Jameison, Esquire
May 9, 2005
Page 2

action; the MCPR should provide that the attorney is able to retain a copy at his or her own expense.

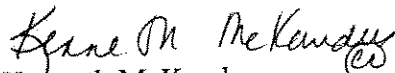
Although a rule has been proposed under which the client may obtain a copy of its file at its own expense, in many cases possession of the original file is valuable in the future representation of the client. For example, any original file in which the attorney obtains and retains original documents may be invaluable to the client, for example in administrative proceedings such as patent prosecution. In such cases, the attorney may retain originally signed and/or official versions of many types of documents (or other evidence) for which a copy might not suffice in the future. For example, many clients take part in patent prosecution activities with the United States Patent and Trademark Office wherein original documents are sent to and received only from the attorney of record. Several types of original documents are significantly more valuable to the client than copies, such as various types of declarations signed by inventors and others, assignment documents, original ribbon copies of patents, foreign filing licenses, and many types of documentary evidence. In these instances, the attorney will never have an interest in the originals that compares to that of the client.

In our experience, ownership of files is raised in cases where the client wishes to transfer its representation on given matter to another attorney, and if the client has paid its bills, there is no need for the attorney to retain the original file. Aside from internal business records of the attorney, having a copy available to the attorney should satisfy any future needs of the attorney, while providing the valuable originals to the client that often requires such files in order to obtain the adequate legal representation to which it is entitled. The client's right to pursue its legal rights overrides the attorney's lesser interest in file.

Sincerely,



Marvin Krislov
Vice President and General Counsel
University of Michigan



Kenneth McKanders
General Counsel
Eastern Michigan University



Andrea Roumell Dickson
Michigan Technological University



Roderick Daane
Lake Superior State University



Victor Zambardi
General Counsel
Oakland University